

# UNITED STATES DISTRICT COURT

for the

Southern District of Ohio

United States of America

v.

ROBERT PHELPS

*Defendant(s)*

Case No.

3:16 MJ 328

## CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of July 11, 2014 to July 30, 2015 in the county of Shelby in the  
Southern District of Ohio, the defendant(s) violated:

*Code Section*

*Offense Description*

See Attachment A

This criminal complaint is based on these facts:

See Attached Affidavit

☐ Continued on the attached sheet.

*Andrea R. Kinzig*

*Complainant's signature*

Andrea R. Kinzig, Special Agent

*Printed name and title*

Sworn to before me and signed in my presence.

Date:

11-7-16

City and state:

Dayton, Ohio

*Sharon L. Ovington*

*Judge's signature*

Sharon L. Ovington, Chief U.S. Magistrate Judge

*Printed name and title*

FILED  
RICHARD W. NAGEL  
CLERK OF COURT

2016 NOV -7 AM 10:16

U.S. DISTRICT COURT  
SOUTHERN DIST. OHIO  
DAYTON, OHIO

**ATTACHMENT A**

**COUNT 1**

**[18 U.S.C. § 2252(a)(2) and (b)(1)]**

On or about July 11, 2014, defendant **ROBERT PHELPS**, in the Southern District of Ohio, knowingly received any visual depiction using any means or facility of interstate or foreign commerce that has been mailed, shipped and transported in or affecting interstate or foreign commerce, by any means including by computer; and the production of such visual depiction involved the use of a minor engaging in sexually explicit conduct and the visual depiction is of such conduct, or attempted or conspired to do so.

In violation of 18 U.S.C. § 2252(a)(2) and (b)(1).

**COUNT 2**

**[18 U.S.C. § 2252(a)(2) and (b)(1)]**

On or about June 22, 2015, defendant **ROBERT PHELPS**, in the Southern District of Ohio, knowingly received any visual depiction using any means or facility of interstate or foreign commerce that has been mailed, shipped and transported in or affecting interstate or foreign commerce, by any means including by computer; and the production of such visual depiction involved the use of a minor engaging in sexually explicit conduct and the visual depiction is of such conduct, or attempted or conspired to do so.

In violation of 18 U.S.C. § 2252(a)(2) and (b)(1).

**COUNT 3**

**[18 U.S.C. § 2252(a)(2) and (b)(1)]**

On or about June 27, 2015, defendant **ROBERT PHELPS**, in the Southern District of Ohio, knowingly received any visual depiction using any means or facility of interstate or foreign commerce that has been mailed, shipped and transported in or affecting interstate or foreign commerce, by any means including by computer; and the production of such visual

depiction involved the use of a minor engaging in sexually explicit conduct and the visual depiction is of such conduct, or attempted or conspired to do so.

In violation of 18 U.S.C. § 2252(a)(2) and (b)(1).

**COUNT 4**  
**[18 U.S.C. § 2252(a)(2) and (b)(1)]**

On or about June 30, 2015, defendant **ROBERT PHELPS**, in the Southern District of Ohio, knowingly received any visual depiction using any means or facility of interstate or foreign commerce that has been mailed, shipped and transported in or affecting interstate or foreign commerce, by any means including by computer; and the production of such visual depiction involved the use of a minor engaging in sexually explicit conduct and the visual depiction is of such conduct, or attempted or conspired to do so.

In violation of 18 U.S.C. § 2252(a)(2) and (b)(1).

**COUNT 5**  
**[18 U.S.C. § 2252(a)(4)(B) and (b)(2)]**

On or about July 30, 2015, defendant **ROBERT PHELPS**, in the Southern District of Ohio, did knowingly possess at least one matter which contains any visual depiction that has been mailed, shipped and transported using any means and facility of interstate or foreign commerce, including by computer; and the production of such visual depiction involved the use of a minor engaging in sexually explicit conduct, and such visual depiction was of such conduction, or attempted or conspired to do so.

In violation of 18 U.S.C. § 2252(a)(4) (B) and (b)(2).

**AFFIDAVIT IN SUPPORT OF**  
**CRIMINAL COMPLAINT**

I, Andrea R. Kinzig, being duly sworn, depose and state as follows:

1. I am a Special Agent (SA) with the Federal Bureau of Investigation (FBI), and have been so employed since 2005. I am currently assigned to the Dayton, Ohio Resident Agency of the Cincinnati Field Office. In connection with my official duties, I investigate violations of federal criminal laws, including offenses involving child exploitation and child pornography.
2. Along with other agents and investigators of the FBI, I am currently involved in an investigation of child pornography offenses committed by **ROBERT PHELPS** (hereinafter referred to as "**PHELPS**"). Based on the investigation conducted to-date, there is probable cause to believe that **PHELPS** possessed and received child pornography, or attempted or conspired to do so, in violation of Title 18, United States Code, Sections 2252(a)(4) (B) and (b)(2) and 2252(a)(2) and (b)(1). I submit this Affidavit in support of a criminal complaint.
3. As part of the investigation, I have reviewed documentation and reports provided by and discussed information with other agents and investigators involved in the investigation. For purposes of this Affidavit, I have not distinguished between information of which I have direct knowledge and that of which I have hearsay knowledge.
4. This Affidavit does not contain every fact known to the investigation, but only those deemed necessary to demonstrate sufficient probable cause that **PHELPS** committed the offenses alleged in the complaint.

**PERTINENT FEDERAL CRIMINAL STATUTES**

5. Title 18, United States Code, Sections 2252(a)(4)(B) and (b)(2) states that it is a violation for any person to knowingly possess, or knowingly access with the intent to view, one or more books, magazines, periodicals, films, video tapes, or other matter which contain any visual depiction that has been mailed, or has been shipped or transported using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce, or which was produced using materials which have been mailed or so shipped or transported, by any means including by computer if the producing of such visual depiction involves the use of a minor engaging in sexually explicit conduct and such visual depiction is of such conduct, or attempts or conspires to do so.
6. Title 18, United States Code, Section 2252(a)(2) and (b)(1) states that it is a violation for any person to knowingly receive or distribute any visual depiction using any means or facility of interstate or foreign commerce or that has been mailed, shipped, or transported in or affecting interstate or foreign commerce or which contains materials which have been mailed or so shipped or transported by any means, including by computer, or to

knowingly reproduce any visual depiction for distribution using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce or through the mails if the producing of such visual depiction involves the use of a minor engaging in sexually explicit conduct and such visual depiction is of such conduct, or attempts or conspires to do so.

7. For purposes of these statutes, the term “sexually explicit conduct” is defined in Title 18, United States Code, Section 2256(2)(A) as:

- a. “Actual or simulated –

- 1) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;
- 2) Bestiality;
- 3) Masturbation;
- 4) Sadistic or masochistic abuse; or
- 5) Lascivious exhibition of genitals or pubic area of any person.”

### **BACKGROUND INFORMATION**

8. Usenet is a worldwide distributed discussion system available on computers. Users can read and post messages (referred to as articles or posts and collectively referred to as news) on one or more categories (referred to as newsgroups). Usenet is distributed among a large, constantly changing conglomeration of servers that store and forward messages to one another in a so-called news feed. Usenet is often considered a hybrid of email and web forums.
9. GrabIt is a free newsreader program for Windows. It allows users to use Usenet without downloading headers. Features of GrabIt include the ability to quickly select, download, and decode binary attachments; advanced error checking while downloading; a search option for groups and articles; and a pause function to free bandwidth.
10. Based on my training and experience, I know that GrabIt is one (of many) means that individuals utilize to search for and download child pornography.

### **FACTS SUPPORTING PROBABLE CAUSE**

11. In 2015, FBI agents investigated a website that will be referred to for purposes of this Affidavit as “Website A”. “Website A” was a bulletin board and website dedicated to the advertisement and distribution of child pornography and the discussion of matters pertinent to the sexual abuse of children, including the safety and security of individuals who sexually exploit children online. Users of this website were required to utilize a user name and password to access the site. Among numerous other users, one of the individuals who accessed the site had a user name of “typocity”.
12. The investigation identified that the “typocity” user accessed material on “Website A” in February 2015 and March 2015. The investigation further identified that on February 27,

2015, the “typocity” user accessed a portion of the website containing child pornography using an Internet Protocol (IP)<sup>1</sup> address of 71.67.113.128.

13. Using publicly available websites, FBI agents were able to determine that the above noted IP Address (71.67.113.128) was operated by the Internet Service Provider (“ISP”) Time Warner Cable. In March 2015, an administrative subpoena/summons was served to Time Warner Cable requesting information related to the user of this IP address on the date and approximate time it was used to access “Website A”. According to information received from Time Warner Cable in response to the subpoena, the IP address was subscribed to **PHELPS** at 103 Birch Street, Jackson Center, Ohio, 45334.
14. Records from the Ohio Bureau of Motor Vehicles identified that **PHELPS** utilized the address of 103 Birch Street in Jackson Center, Ohio on his current Ohio driver’s license. This driver’s license was issued on or around July 17, 2015. Records from the Ohio Bureau of Motor Vehicles also identified that **PHELPS** utilized the address of 103 Birch Street in Jackson Center, Ohio when registering four motor vehicles.

#### Execution of Search Warrant

15. On July 30, 2015, agents and task force officers of the FBI searched **PHELPS**’ residence at 103 Birch Street, Jackson Center, Ohio, pursuant to a search warrant authorized by the United States District Court for the Southern District of Ohio. No individuals were present when agents and officers arrived to conduct the search. Among other items, the following were located and seized from the northeast bedroom of the residence:
  - a. Custom Antec desktop computer
  - b. Mail addressed to **PHELPS** and a Time Warner Cable bill for an account in **PHELPS**’ name
16. While agents and officers were searching the residence at 103 Birch Street, I (along with another officer) located and contacted **PHELPS** at his place of employment in Sidney, Ohio. **PHELPS** consented to travel to the Shelby County (Ohio) Sheriff’s Office to be interviewed. However, he terminated the interview after a short period of time. In summary, **PHELPS** provided the following information during the brief interview:
  - a. **PHELPS** has resided at 103 Birch Street in Jackson Center, Ohio since approximately 1997. **PHELPS** was the only individual who has resided at the residence during the past few years. There were not any individuals who regularly came over to the residence during this time period.

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<sup>1</sup> “Internet Protocol address” or “IP address” refers to a unique number used by a computer to access the Internet. IP addresses can be “dynamic,” meaning that the ISP assigns a different unique number to a computer every time it accesses the Internet. IP addresses might also be “static,” if an ISP assigns a user’s computer a particular IP address which is used each time the computer accesses the Internet. IP addresses are also used by computer servers, including web servers, to communicate with other computers.

- b. **PHELPS'** wife and his two adult sons – Nathan Phelps and Nicholas Phelps – previously resided at the residence. Nathan Phelps and Nicholas Phelps moved out of the residence a few years ago. **PHELPS'** wife died in 2002.
- c. **PHELPS** identified that Nathan Phelps moved to Arizona a few years ago. Nathan Phelps had only returned to **PHELPS'** residence on one occasion since he moved, which **PHELPS** estimated to be approximately one year ago during the summer of 2014.
- d. **PHELPS** had only one working computer in the residence, which was located in his bedroom. **PHELPS** built this computer himself, using hard drives that he purchased new. **PHELPS** was the only person who used this computer.
- e. **PHELPS** had two additional computers in the residence that were no longer operational, one of which was his computer and one of which was his sons' computer. The computer that was utilized by his sons had been broken for a few years.

17. Electronic media seized pursuant to the search warrant were submitted to the FBI's computer laboratory for analysis. The examiner determined that the custom Antec desktop computer contained three hard drives. The following was recovered on one of the three hard drives:

- a. More than 6,300 image files and more than 590 video files were recovered from the hard drive a folder called "Saved Stuff" and a subfolder called "Camz", and further saved and categorized into various additional subfolders. The files were saved onto the hard drive during the approximate time period of June 2015 to July 2015. These files primarily depicted children and young adults in various states of undress and/or engaged in sexually explicit conduct. Based on my training and experience, I believe that more than 2,000 of the image files and more than 110 of the video files depict child pornography (as defined by Title 18, United States Code, Section 2256(8)(A)). A small sample of these files are described as follows:

- 1) **Baby Lexxa Ass.jpg**: The file contains a collage of images that appear to be still images from a video file. The series of still images depict a nude adult white male and what appears to be a female infant or young toddler. The baby is wearing a shirt that is pulled up around her neck and a diaper that is pulled down around her waist. The baby is bent over in front of the adult male, and the adult male's penis is inserted into the child's buttocks. File property information identified that the file was saved onto the hard drive on or around **June 22, 2015**. The file was recovered from the following file path: [root]/Saved Stuff/Camz/S131415-1/Post14/Screens/1410. Collection European girls/Baby Lexxa Ass.jpg.

- 2) **046.jpg**: The file is an image that depicts a pre-pubescent white female child who is wearing a light purple shirt and a nude adult white male. The penis of the adult male is in the child's mouth. File property information identified that the file was saved onto the hard drive on or around **June 22, 2015**. The file was recovered from the following file path: [root]/Saved Stuff/Camz/internet download/hanna/046.jpg.
  - 3) **pthc 9yo grace stephy - full.wmv**: The file is a video that depicts a nude pre-pubescent white female child with brown hair and a nude adult white male, both of whom are on a bed at the beginning of the video. The child performs oral sex on the adult male's penis while they are on the bed. The child then straddles the adult male's body, and the adult male has vaginal sexual intercourse with the child. The video then switches to an outdoor setting, and both the child and adult male are nude. The child performs oral sex on the adult male's penis. The video is approximately one minute and 38 seconds in duration. File property information identified that the file was saved onto the hard drive on or around **June 22, 2015**. The file was recovered from the following file path: [root]/Saved Stuff/Camz/\_pthc\_0yo\_grace\_stephy\_-\_full.wmv.
  - 4) **LC-7470.jpg**: The file is a close-up image of the nude vagina of a pre-pubescent white female child who is wearing a brown skirt that is pulled up around her waist. The penis of what appears to be an adult white male is penetrating the child's vagina. File property information identified that the file was saved onto the hard drive on or around **June 27, 2015**. The file was recovered from the following file path: [root]/Saved Stuff/Camz/brown skirt/LC-7470.jpg.
  - 5) **Yri%20(101).jpg**: The file is an image that depicts a pre-pubescent white female child who is completely nude and sitting on a bed. The penis of an adult white male is in the child's mouth, and a pink object is inserted into the child's vagina. File property information identified that the file was saved onto the hard drive on or around **June 30, 2015**. The file was recovered from the following file path: [root]/Saved Stuff/Camz/3fold/3fold/3sister/Yri%20(101).jpg.
  - 6) **Bettykiss 19. .jpg**: The file is an image that depicts a pre-pubescent white female child who is completely nude and an adult white male, both of whom are on a bed. The child is kneeling over the man, and the man's penis is in the child's mouth. File property information identified that the file was saved onto the hard drive on or around **June 30, 2015**. The file was recovered from the following file path: [root]/Saved Stuff/Camz/New folder/bettykiss\_\_19\_.jpg.
- b. Also recovered from the hard drive were more than 255,000 images and more than 175 videos that were saved in a folder called "Saved Stuff", a subfolder called "Gabbit Downloads", and an additional subfolder called "LS". The files were further saved and categorized into various subfolders. The files were saved onto the hard drive during the approximate time period of May 2014 to July 2014. The files primarily depicted children and young adults in various states of

undress, some of which depicted a lascivious display of the genitalia and/or sexually explicit conduct. Many of the files had a watermark on the images containing "LS Models", "LS Models.com", "LS Magazine", or something similar. Based on my training and experience, I know that a magazine called LS Magazine and a website called LS Models are known to depict a series of images and videos of young female models, some of which depict child pornography.

- c. I have reviewed the video files that were recovered from the various subfolders of the "GrabIt Downloads" and "LS" folders noted above in sub-paragraph (b). Based on my training and experience, I believe that more than 120 of these video files depict child pornography (as defined by Title 18, United States Code, Section 2256(8)(A)). Due to the large number of image files, I am still reviewing the files to determine how many depict child pornography. One of the video files depicting child pornography is described as follows:

- 1) **lsm15-01-03.mpg**: The file is a video that depicts two pre-pubescent white female children who are completely nude. The two children are playing together in a kitchen and speaking to each other in a non-English language. The camera zooms in on the children's vaginas at various times during the video. The video is approximately seven minutes and one second in duration. File property information identified that the file was saved onto the hard drive on or around **July 11, 2014**. The file was recovered from the following file path: [root]/Saved Stuff/GrabIt Downloads/LS/LS Index Complete/LS Magazine/15/lsm15-01-03.mpg.

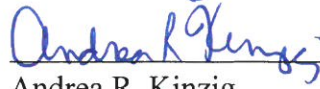
- d. The GrabIt executable program file was saved onto the hard drive. A "GrabIt Downloads" folder was also saved onto the hard drive, indicating that it was a location where files from the GrabIt program were downloaded.
    - e. The BCWipe executable file was also saved onto the hard drive. Based on Internet research, I know that BCWipe is a file-eraser tool that permanently deletes and wipes files from hard drives. Based on my training and experience, I know that individuals involved in child pornography offenses often go through cycles where they collect child pornography, delete the files, and re-collect. In my experience, they sometimes use wiping software when deleting the files to prevent later recovery and/or to ensure the files are not later detected by law enforcement.
18. As detailed above, the above noted files depicting child pornography were saved onto the computer's hard drive from approximately May 2014 to July 2014 and from June 2015 to July 2015. Also as detailed above, **PHELPS** identified that he lived at his residence alone during these time periods.
19. Based on all of the information noted in this Affidavit, I believe that **PHELPS** used his custom Antec desktop computer to knowingly possess and receive child pornography.

## CONCLUSION

20. Based on the aforementioned factual information, I respectfully submit that there is probable cause to believe that on or about July 11, 2014, **ROBERT PHELPS**, in the Southern District of Ohio, knowingly received any visual depiction using any means or facility of interstate or foreign commerce that has been mailed, shipped and transported in or affecting interstate or foreign commerce, by any means including by computer; and the production of such visual depiction involved the use of a minor engaging in sexually explicit conduct and the visual depiction is of such conduct, or attempted or conspired to do so, in violation of Title 18, United States Code, Sections 2252(a)(2) and (b)(1).
21. I further submit that there is probable cause to believe that on or about June 22, 2015, **ROBERT PHELPS**, in the Southern District of Ohio, knowingly received any visual depiction using any means or facility of interstate or foreign commerce that has been mailed, shipped and transported in or affecting interstate or foreign commerce, by any means including by computer; and the production of such visual depiction involved the use of a minor engaging in sexually explicit conduct and the visual depiction is of such conduct, or attempted or conspired to do so, in violation of Title 18, United States Code, Sections 2252(a)(2) and (b)(1).
22. I further submit that there is probable cause to believe that on or about June 27, 2015, **ROBERT PHELPS**, in the Southern District of Ohio, knowingly received any visual depiction using any means or facility of interstate or foreign commerce that has been mailed, shipped and transported in or affecting interstate or foreign commerce, by any means including by computer; and the production of such visual depiction involved the use of a minor engaging in sexually explicit conduct and the visual depiction is of such conduct, or attempted or conspired to do so, in violation of Title 18, United States Code, Sections 2252(a)(2) and (b)(1).
23. I further submit that there is probable cause to believe that on or about June 30, 2015, **ROBERT PHELPS**, in the Southern District of Ohio, knowingly received any visual depiction using any means or facility of interstate or foreign commerce that has been mailed, shipped and transported in or affecting interstate or foreign commerce, by any means including by computer; and the production of such visual depiction involved the use of a minor engaging in sexually explicit conduct and the visual depiction is of such conduct, or attempted or conspired to do so, in violation of Title 18, United States Code, Sections 2252(a)(2) and (b)(1).
24. I further submit that there is probable cause to believe that on or about July 30, 2015, **ROBERT PHELPS**, in the Southern District of Ohio, did knowingly possess at least one matter which contains any visual depiction that has been mailed, shipped and transported using any means and facility of interstate or foreign commerce, including by computer; and the production of such visual depiction involved the use of a minor engaging in sexually explicit conduct, and such visual depiction was of such conduction, or attempted

or conspired to do so, in violation of Title 18, United States Code, Section 2252(a)(4) (B) and (b)(2).

25. I therefore respectfully request that a criminal complaint be granted upon this Affidavit.



Andrea R. Kinzig  
Special Agent, FBI

Subscribed and sworn to before me

This 7<sup>th</sup> day of November, 2016

  
SHARON L. OVINGTON

Chief United States Magistrate Judge

